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EXAMINER

NGUYEN, PHILLIP H

ART UNIT PAPER NUMBER

2191

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,617

Applicant(s)

ALBERTAO, FELIPE

Examiner

Phillip H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is response the amendment filed on October 31, 2006. Claims 1-28 remain pending.
2. Per Applicant's request, claim 8 has been cancelled.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claims 1, 14, and 21 raise a question as to whether the claims are directed to an abstract idea that is not tied to a technological art, environment or machine which would accomplished a practical application producing a concrete, useful, and tangible result to form the basic of statutory subject matter under 35 U.S.C. 101. For instance, "if the integrity of the software change is validated, installing the software change on the network device according to the update policy" is lacking of concreteness since the outcome is unpredictable. The outcome is unpredictable because we don't know what to expect "if the integrity of the software change is not validated". Since the result is lacking of concreteness, the claims are non-statutory. Claims 2-13, 15-20, and 22-27 are directly depend on claims 1, 14, and 21, respectively, and have been rejected under the same reason.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For instance, claim 1 recites, "if the integrity of the software change is validated, installing the software change on the network device according to the update policy" is unclear to the examiner whether the installation process of the software change on the network device still perform when the integrity of the software change is **not** validated or not. Examiner suggests the Applicant to recites the limitation to avoid the alternative path.

Response to Amendment

7. Per Applicant's argument regarding Moshir does not disclose, "the software change is digitally signed..." the argument is moot in view of new ground rejection.
8. Per Applicant's argument regarding Moshir's fingerprint and signature is not the same digital signature information employed by the claimed invention. Moreover, Moshir does not appear to discloses or suggest validating integrity of the received software change based on examining a digital signature for the software change.

Examiner respectfully disagrees with all the allegations are argued. Examiner, in his previous office action, pointed out locations in the cited prior art. See claim rejection for more detailed explanation of claimed limitations.

Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification. See MPEP 211 [R-1] Interpretation of Claims- Broadest Reasonable Interpretation.

During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' Applicant always has the opportunity to amend the claims during the prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541, 550-551 (CCPA 1969).

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-7 and 9-11, and 13-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Moshir et al. (United States Patent No.: 6,990,660 B2).

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As per claim 1:

Moshir discloses a network device for managing a software change over a network, comprising:

- a transceiver arranged to send and receive a packet over the network ("**non-graphical user interface network connection, such as connection through a winsock layer**" Col 8, line 36)
- a processor ("**an update server**" Col 8, line 34; "**The servers may be uniprocessor or multiprocessor**" Col 7, line 1) coupled to the transceiver, that is configured to perform actions, including:
 - o determining an update policy associated with the network device ("**The update task list located on the update server is associated with a specific target computer 500, and specifies at least one download address where the software update can be found...other information that may be included in the task identifier, such as a date the download will first be attempted**" Col 9, line 36-38);
 - o determining an availability of the software change based in part on the update policy ("**when a new software patch becomes available, the stored information can be used to determine if a particular target computer needs the patch**" Col 5, line 15-17);
 - o selecting the software change based in part on the update policy ("**The rollout schedule defines the data and time the package are made**

available to the designated machines... Choose a package to install" Col 23, line 20-25);

- receiving the software change through a distribution service according to the update policy ("**update server checks for a target computer that is eligible for the software update but have not yet received it. If one is found, the appropriate task identifier, specifying the target machine, the software update, and the location, are added to the update server's task update list"** Col 12, line 21-26, the **update server receives software update from the package computer**);
- validating an integrity of the received software change based on examining a digital signature for the software change ("**verifies that a software package can be reasonably be installed on a given target computer 500 before attempting installation"** Col 13, line 40-42);
and
- if the integrity of the software change is validated, installing the software change on the network device according to the update policy ("**Once the need for a particular patch has been established by scanning its signature(s) on all computers within the network it can then be quickly deployed by the administrator by merely selecting the data and time"** Col 4, line 26-29).

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As per claim 2:

Moshir discloses the network device as in claim 1 above; and further discloses:

- wherein the network device is at least one of a network appliance, ser appliance, internet appliance, intranet appliance, web server, cache server, file server, router, gateway, switch, bridge, firewall, and a proxy ("**computer network 100, 102, 104 include local network, wide area network, internet or intranet...firewall**" Col 6, line 20-43).

As per claim 3:

Moshir discloses the network device as in claim 1 above; and further discloses:

- wherein the update policy further comprises at least one of a selection criterion, a delivery criterion, and an installation criterion ("**a date the download will first be attempted**" Col 9, line 48; "**choose a package to install**" Col 23, line 24).

As per claim 4:

Moshir discloses the network device as in claim 1 above; and further discloses:

- wherein the distribution service is further configured to enable access to the software change from at least one of a repository, a third party service, a test server, and a development server ("**the software package is owned by a third party... software package also owned by the update server user...**" Col 20, line 56-60).

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As per claim 5:

Moshir discloses the network device as in claim 1 above; and further discloses:

- wherein the distribution service further comprises at least one of a reverse proxy server, and a peer-to-peer device ("**proxy server circuit-level gateways, and proxy server application-level gateways**" Col 7, line 53-54).

As per claim 6:

Moshir discloses the network device as in claim 1 above; and further discloses:

- wherein selecting the software change further comprises determining the selection based in part on the at least one of a hardware configuration of the network device, a priority associated with the software change, a software configuration of the network device, a type associated with the software change, a control list, an impact associated with the software change, and a schedule ("**it may also define a minimum hardware/software configuration necessary for the patch installation**" Col 13, line 45; "**Schedule a rollout**" Col 23, line 29).

As per claim 7:

Moshir discloses the network device as in claim 1 above; and further discloses:

- wherein the software change is independent of a software version number ("**the software update itself can e any of a wide variety of software that**

can be updated across a network, such as an incremental software patch, a new software program never before installed on the target computer, an update to an old program, software scripts, data files, or even an update of the update agent” Col 9, line 23-28).

As per claim 9:

Moshir discloses the network device as in claim 1 above; and further discloses:

- the software change further comprises a third party change, wherein the third party change is included in the software change at least in part by a third party (**“the software package is owned by a third party which leases the software to the user” Col 20, line 56-57).**

As per claim 10:

Moshir discloses the network device as in claim 1 above; and further discloses:

- wherein installing the software change further comprises generating a log that enables rollback of the installed software change (**“the update is automatic, and it can detect errors within a specific update and automatically rollback a faulty update to leave the network in a usable state” Col 5, line 61-63).**

As per claim 11:

Moshir discloses the network device as in claim 1 above; and further discloses:

- wherein the software change further comprises a change package that includes at least one of a binary file, a configuration file, a change descriptor, a package descriptor, test procedure, and a deployment descriptor ("**the type of software that can be updated comprises...executable files**" Col 17, line 39-43).

As per claim 13:

Moshir discloses the network device as in claim 1 above; and further discloses:

- wherein determining the availability of the software change further comprises subscribing to the distribution service ("**once the enrollment process is complete, the administrator can license one or more services on a recurring subscription basic**" Col 11, line 24-26).

As per claim 14:

Moshir discloses a method for managing a software change to a network device over a network, comprising:

- determining an update policy associated with software for the network device ("**The update task list located on the update server is associated with a specific target computer 500, and specifies at least one download address where the software update can be found...other information that may be included in the task identifier, such as a date the download will first be attempted**" Col 9, line 36-38);

- determining, over the network, an availability of the software change based in part on the update policy (**"when a new software patch becomes available, the stored information can be used to determine if a particular target computer needs the patch"** Col 5, line 15-17);
- selecting the software change based in part on the update policy (**"The rollout schedule defines the data and time the package are made available to the designated machines... Choose a package to install"** Col 23, line 20-25);
- receiving the selected software change over a distribution service according to the update policy (**"update server checks for a target computer that is eligible for the software update but have not yet received it. If one is found, the appropriate task identifier, specifying the target machine, the software update, and the location, are added to the update server's task update list"** Col 12, line 21-26, **the update server receives software update from the package computer**); and
- if the received software change is valid based on a digital signature, installing the received software change on the network device according to the update policy (**"Once the need for a particular patch has been established by scanning its signature(s) on all computers within the network it can then be quickly deployed by the administrator by merely selecting the data and time"** Col 4, line 26-29).

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As per claim 15:

Moshir discloses the method as in claim 14 above; and further discloses:

- wherein determining the update policy further comprises determining at least one of a selection criterion, a delivery criterion, and an installation criterion for the software change ("**a date the download will first be attempted**" Col 9, line 48; "**choose a package to install**" Col 23, line 24).

As per claim 16:

Moshir discloses the method as in claim 14 above; and further discloses:

- subscribing to the distribution service ("**once the enrollment process is complete, the administrator can license one or more services on a recurring subscription basic**" Col 11, line 24-26); and
- monitoring the distribution service for the software change ("**monitored 800 for new patches 902**" Col 13, line 62).

As per claim 17:

Moshir discloses the method as in claim 14 above; and further discloses:

- wherein selecting the software change further comprises determining the selection based in part on at least of a hardware configuration of the network device, a priority associated with the software change, a software configuration of the network device, a type associated with the software change, a control list, an impact associated with the software change, and a

schedule (**"it may also define a minimum hardware/software configuration necessary for the patch installation"** Col 13, line 45; **"Schedule a rollout"** Col 23, line 29).

As per claim 18:

Moshir discloses the method as in claim 14 above; and further discloses:

- wherein the software change further comprises a change package that includes at least one of a binary file, a configuration file, a change descriptor, a package descriptor, test procedure, and a deployment descriptor (**"the type of software that can be updated comprises...executable files"** Col 17, line 39-43).

As per claim 19:

Moshir discloses the method as in claim 14 above; and further discloses:

- wherein installing the received software change further comprises determining at least one of a priority, an impact, an integrity, and a time associated with the installation of the software change (**"Once the need for a particular patch has been established by scanning its signature(s) on all computers within the network it can then be quickly deployed by the administrator by merely selecting the data and time"** Col 4, line 26-29).

As per claim 20:

Moshir discloses the method as in claim 14 above; and further discloses:

- wherein the distribution service further comprises at least one of a reverses proxy server and a peer-to-peer distribution service ("**proxy server circuit-level gateways, and proxy server application-level gateways**" Col 7, line 53-54).

As per claim 21:

Moshir discloses a system for communicating a change package over a network, comprising:

- a repository configured to store the change package ("repository component" Fig. 9, item 600);
- a distribution service, coupled to the repository that is configured to distribute the change package over the network (see for example, Fig. 2).
- A client (see for example, Fig. 2), coupled to the distribution service, that is configured to perform actions, including:
 - o determining an update policy associated with the network device ("**The update task list located on the update server is associated with a specific target computer 500, and specifies at least one download address where the software update can be found...other information that may be included in the task identifier, such as a date the download will first be attempted**" Col 9, line 36-38);

- determining an availability of the change package based in part on the update policy (**"when a new software patch becomes available, the stored information can be used to determine if a particular target computer needs the patch"** Col 5, line 15-17);
- selecting the change package based in part on the update policy (**"The rollout schedule defines the data and time the package are made available to the designated machines... Choose a package to install"** Col 23, line 20-25);
- receiving the change package through a distribution service according to the update policy (**"update server checks for a target computer that is eligible for the software update but have not yet received it. If one is found, the appropriate task identifier, specifying the target machine, the software update, and the location, are added to the update server's task update list"** Col 12, line 21-26, **the update server receives software update from the package computer**); and
- if the received change package is validated using the digital signature, installing the software change on the network device according to the update policy (**"Once the need for a particular patch has been established by scanning its signature(s) on all computers within the network it can then be quickly deployed by the administrator by merely selecting the data and time"** Col 4, line 26-29).

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As per claim 22:

Moshir discloses the system as in claim 21 above; and further discloses:

- wherein the distribution service further comprises at least one of a reverse proxy server, and a peer-to-peer network ("**proxy server circuit-level gateways, and proxy server application-level gateways**" Col 7, line 53-54).

As per claim 23:

Moshir discloses the system as in claim 21 above; and further discloses:

- wherein the repository further comprises at least one of trust information, subscription information, and an observer mechanism ("administrators and administrator helpers can benefit greatly from a central repository where they can enter and retrieve information regarding request for help" Col 11, line 4-10).

As per claim 24:

Moshir discloses the system as in claim 21 above; and further discloses:

- a license manager coupled to the distribution service, and enabled to provide at least one of a public key certificate, a software license, a control list, and a revocation list ("the administrator can license one or more services on a recurring subscription basic" Col 11, line 25-26).

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As per claim 25:

Moshir discloses the system as in claim 21 above; and further discloses:

- wherein the change package further comprises at least one of a software change, a change descriptor, a package descriptor, and a deployment descriptor (**"package could refer to an entire program including all the necessary files, to one or more data files, to a software patch to an existing file, to one or more data files, to a change to a configuration file, to a *.dll file, a driver file for a specific piece of hardware attached to a computer and/or a computer network, and so on"** Col 8, line 20-25).

As per claim 26:

Moshir discloses the system as in claim 21 above; and further discloses:

- wherein the client further comprises at least one of a network appliance, server appliance, internet appliance, intranet appliance, web server, cache server, file server, router, gateway, switch, bridge, firewall, and a proxy (**"computer network 100, 102, 104 include local network, wide area network, internet or intranet...firewall"** Col 6, line 20-43).

As per claim 27:

Moshir discloses the system as in claim 21 above; and further discloses:

- wherein the distribution service further comprises at least one of a reverse proxy server, and a peer-to-peer device (**"proxy server circuit-level**

gateways, and proxy server application-level gateways” Col 7, line 53-54).

As per claim 28:

Moshir discloses an apparatus for managing a software change over a network, comprising:

- a transceiver arranged to send and receive a packet over the network (**“non-graphical user interface network connection, such as connection through a winsock layer” Col 8, line 36)**
- a processor (**“an update server” Col 8, line 34; “The servers may be uniprocessor or multiprocessor” Col 7, line 1)** coupled to the transceiver, that is configured to perform actions, including:
 - o a means for determining an update policy associated with the apparatus (**“The update task list located on the update server is associated with a specific target computer 500, and specifies at least one download address where the software update can be found...other information that may be included in the task identifier, such as a date the download will first be attempted” Col 9, line 36-38);**
 - o a means for employing the update policy to perform further actions, including:

- a means for determining an availability of the software change based in part on the update policy (**"when a new software patch becomes available, the stored information can be used to determine if a particular target computer needs the patch"** Col 5, line 15-17);
- a means for selecting the software change (**"The rollout schedule defines the data and time the package are made available to the designated machines... Choose a package to install"** Col 23, line 20-25);
- a means for receiving the software change through a distribution service (**"update server checks for a target computer that is eligible for the software update but have not yet received it. If one is found, the appropriate task identifier, specifying the target machine, the software update, and the location, are added to the update server's task update list"** Col 12, line 21-26, **the update server receives software update from the package computer**);
- a means for installing the validated software change on the apparatus (**"Once the need for a particular patch has been established by scanning its signature(s) on all computers within the network it can then be quickly deployed by the**

administrator by merely selecting the data and time” Col 4,
line 26-29).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moshir et al. (United States Patent No.: 6,990,660 B2), in view of Shinzaki (United States Patent No.: 6,978,024 B2).

As per claim 12:

Moshir discloses the network device as in claim 1 above, but does not explicitly disclose the software change is digitally signed by at least one of a developer, releaser, tester, third-party, and a manager associated with the software change.

However, Shinzaki discloses an analogous device using digitally signature by third-party (“the third party digital signature” Col 14, line 39).

Therefore, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Moshir’s device to include the third party signature. The modification is obvious to one of the ordinary skill in the art **because a digital signature is put, using a secret key of the digital-signature server, to a**

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time-stamped viewing access log obtained by the viewing access log recording server. It is possible to certainly prevent the viewing access log from being altered (Col 3, line 45-54).

Conclusion

13. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

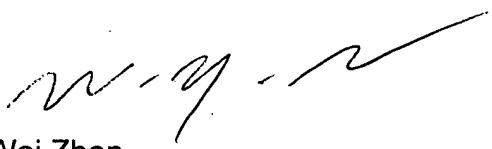
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip H. Nguyen whose telephone number is (571) 270-1070. The examiner can normally be reached on Monday - Friday 10:00 AM - 3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN
12/11/06



Wei Zhen
Supervisory Patent Examiner